



## 94TH GENERAL ASSEMBLY

### State of Illinois

2005 and 2006

**HB4988**

Introduced 1/20/2006, by Rep. Carolyn H. Krause

#### SYNOPSIS AS INTRODUCED:

755 ILCS 5/11a-24 new  
755 ILCS 5/11a-25 new  
755 ILCS 5/11a-26 new  
755 ILCS 5/11a-27 new  
755 ILCS 5/11a-28 new  
755 ILCS 5/23-1.1 new

Amends the Probate Act of 1975. In the Article relating to guardians for disabled adults, provides for the resignation, removal for cause, and emergency removal of such guardians. Specifies procedures and grounds for removal. In the Article on resignation and removal of representatives, provides that the new provisions control with respect to guardians of disabled adults.

LRB094 16878 AJO 52157 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Probate Act of 1975 is amended by adding  
5 Sections 11a-24, 11a-25, 11a-26, 11a-27, 11a-28, and 23-1.1 as  
6 follows:

7 (755 ILCS 5/11a-24 new)

8 Sec. 11a-24. Resignation of guardian. Upon petition of a  
9 guardian, the court may permit the guardian to resign. The  
10 petition may be heard without notice or after giving notice to  
11 such persons and in such manner as the court directs. If the  
12 petitioner is permitted to resign the court shall revoke his or  
13 her letters.

14 (755 ILCS 5/11a-25 new)

15 Sec. 11a-25. Emergency pre-removal powers of court. Any  
16 person having personal knowledge of the circumstances of an  
17 emergency involving the life or health of a disabled adult ward  
18 may bring those circumstances to the court's attention, either  
19 by sworn petition or by sworn oral testimony and with or  
20 without notice to the guardian. Based upon that petition or  
21 testimony, the court, upon determining that the ward's life or  
22 health is in immediate danger and regardless of whether removal  
23 proceedings have been initiated, may enter an order providing  
24 for, but not necessarily limited to, immediate suspension of  
25 the powers of the ward's guardian. The court may further order  
26 a citation under Section 11a-28 to issue and immediately  
27 appoint a guardian ad litem to investigate the allegations. A  
28 guardian ad litem so appointed is invested with the powers of  
29 an emergency temporary guardian.

30 If, prior to the hearing, notice was not given to the  
31 guardian subject to removal, such notice as the court deems

1 appropriate shall be given to the guardian. The citation  
2 referred to in Section 11a-28 may be served with this notice.

3 (755 ILCS 5/11a-26 new)

4 Sec. 11a-26. "Person interested in a disabled adult"  
5 defined. For the purposes of bringing a petition for removal of  
6 a guardian under Section 11a-28, "person interested in a  
7 disabled adult" means one who has or represents a financial  
8 interest, property right, or fiduciary status at the time of  
9 reference that may be affected by the action, power, or  
10 proceeding involved, including without limitation an heir,  
11 legatee, creditor, person entitled to a spouse's or child's  
12 award, or guardian.

13 (755 ILCS 5/11a-27 new)

14 Sec. 11a-27. Removal. On petition of any person interested  
15 in a disabled adult or on the court's own motion, the court may  
16 remove the guardian of a disabled adult if:

17 (1) the guardian is acting under letters secured by  
18 false pretenses;

19 (2) the guardian is adjudged a person subject to  
20 involuntary admission under the Mental Health and  
21 Developmental Disabilities Code or is adjudged a disabled  
22 person;

23 (3) the guardian is convicted of a felony;

24 (4) the guardian fails to oversee the living conditions  
25 and care of the ward so that the health or safety of the  
26 ward is adversely affected by the conditions;

27 (5) the guardian fails to supply food and water or to  
28 maintain the personal hygiene of the ward when the guardian  
29 lives with the ward;

30 (6) the guardian wastes or mismanages any assets of the  
31 ward's estate for the guardian's personal or financial gain  
32 or for the personal or financial benefit of any third  
33 party;

34 (7) the guardian conducts himself or herself in such a

1 manner as to abuse the ward physically, sexually,  
2 emotionally, or psychologically;

3 (8) the guardian conducts himself or herself in such a  
4 manner as to endanger any co-guardian or the surety on the  
5 guardian's bond;

6 (9) the guardian fails to give sufficient bond or  
7 security, counter security, or a new bond after being  
8 ordered by the court to do so;

9 (10) the guardian fails to file an inventory or  
10 accounting after being ordered by the court to do so;

11 (11) the guardian conceals himself or herself so that  
12 process cannot be served upon the guardian or notice cannot  
13 be given to the guardian;

14 (12) the guardian becomes incapable of or unsuitable  
15 for the discharge of the guardian's duties;

16 (13) the guardian fails to follow any direct order of  
17 the court after being ordered by the court to do so;

18 (14) the guardian of the person or plenary guardian  
19 becomes a non-resident of this State, or any guardian  
20 becomes a non-resident of the United States; or

21 (15) there is other good cause.

22 (755 ILCS 5/11a-28 new)

23 Sec. 11a-28. Procedure on removal.

24 (a) Except as provided in Section 11a-25, before removing a  
25 guardian for any of the causes set forth in Section 11a-27, the  
26 court shall order a citation to issue directing the guardian to  
27 show cause why he or she should not be removed for the cause  
28 stated in the citation. The citation must be served not less  
29 than 10 days before the return day designated in the citation  
30 and must be served and returned in the manner provided for  
31 summons in civil cases. The address recorded by the guardian  
32 with the clerk of the court shall be considered the place where  
33 citations, notices, or other process may be served upon him or  
34 her.

35 (b) If (i) the petitioner or his or her attorney files in

1 the office of the clerk of the court an affidavit stating that  
2 the guardian resides or has gone out of this State, is  
3 concealed within this State, or on due inquiry cannot be found  
4 so that the citation cannot be served upon him or her, and  
5 stating the last known post office address of the guardian, or  
6 (ii) the citation is issued on the court's own motion and is  
7 not served on the guardian, the clerk shall prepare a notice  
8 stating the name of the ward, the number of the case, the name  
9 of the person to whom the notice is given, the alleged cause of  
10 removal, and the time and place of hearing and shall direct the  
11 guardian to appear and show cause why he or she should not be  
12 removed. Not less than 15 days before the return day designated  
13 in the notice, the clerk of the court shall send by registered  
14 mail one copy of the notice to the guardian at his or her last  
15 known post office address as stated in the affidavit if one is  
16 filed, one copy of the notice to the guardian at his or her  
17 last known post office address as shown by the last document  
18 filed in the court in which he or she stated his or her post  
19 office address, and one copy of the notice to his or her  
20 attorney of record.

21 (c) The guardian whose removal is sought may file a  
22 pleading to the petition or charges for removal on or before  
23 the return day designated in the citation or notice or within  
24 such further time as the court permits. If upon hearing the  
25 court finds that the guardian should be removed for any cause  
26 listed in Section 11a-27, the court may remove the guardian and  
27 revoke the letters of the guardian, unless his or her letters  
28 have been previously revoked under the court's emergency powers  
29 under Section 11a-25.

30 (d) The court may assess the costs of the proceeding  
31 against a guardian who is removed for any cause listed in  
32 Section 11a-27.

33 (755 ILCS 5/23-1.1 new)

34 Sec. 23-1.1. Resignation and removal of a guardian of a  
35 disabled adult. The provisions of Sections 11a-24, 11a-25,

1 11a-26, 11a-27, and 11a-28, relating to the resignation and  
2 removal of a guardian of a disabled adult, supersede the  
3 provisions of this Article with respect to such guardians.